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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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7 **LODGED** Attorneys for the United States

8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 JAN 26 2004 EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

10 CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

Plaintiff,

v.

THOMPSON, et al.,

Defendants.

) Case No. CIV. S-03-1532 FCD GGH

) **[proposed]**

) **Order Holding Walter Thompson in**
) **Contempt**

) **Hon. Frank C. Damrell, Jr.**

) **March 5, 2004, at 10:00 a.m.**

15 Upon motion by plaintiff, United States of America, to hold defendant Walter Thompson
16 in contempt for violating paragraphs E through H of the Preliminary Injunction, the Court makes
17 the following findings of fact and conclusions of law and enters the following contempt order:

18 **I. Findings of Fact**

19 Based on the evidence submitted by the parties, the Court finds as follows:

20 1. The Court entered a Preliminary Injunction on September 12, 2003 ordering
21 Thompson to:

22 E. . . . amend and correct his Form 941 for the third quarter of 2000, file a complete
23 and accurate Form 941 for the first and second quarters of 2003, and pay the taxes and
interest lawfully owing within 30 days of the entry of this Order.

24 F. . . . file with the SSA and issue to his employees amended Forms W-2 for 2000
25 and accurate Forms W-2 for 2001 through 2002 with 30 days of the entry of this Order
and send copies of these Forms W-2 to counsel for the United States at the same time that
26 he files the originals.

27 G. . . . within ten days of the date of this Order . . . deliver to all . . . current
28 employees, and any former employees employed at any time since July 1, 2000, a copy of
this Court's findings and preliminary injunction. . . . He must file a sworn certificate of

1 compliance, swearing that he has complied with this portion of the Order, within twelve
2 days of the date of this Order.

3 H. . . . within ten days of the date of this Order . . . post and keep posted in one or
4 more conspicuous places on his business premises . . . a copy of this Court's findings and
5 preliminary injunction. . . . Thompson must file a sworn certificate of compliance,
6 swearing that he has complied with this portion of the Order, within twelve days of the
7 date of this Order.¹

8 2. Thompson has failed to amend and correct his Form 941 for the third quarter of 2000,
9 to file Forms 941 for the first and second quarters of 2003, and to pay the taxes and interest
10 owing.²

11 3. Thompson has failed to amend his Forms W-2 for 2000, file Forms W-2 for the
12 subsequent years, and issue those Forms W-2 to his employees and to counsel for the United
13 States.³

14 4. Thompson has failed to certify to the Court either that he has provided a copy of the
15 Preliminary Injunction to his current and former employees.

16 5. Thompson has failed to certify to the Court that he has posted a copy of the
17 Preliminary Injunction at his business.

18 **II. Conclusions of Law**

19 1. District courts have inherent power to enforce compliance with orders through
20 contempt.⁴

21 2. As opposed to criminal contempt, civil contempt "is designed to force the contemnor
22 to comply with an order of the court."⁵

23 ¹ Preliminary Injunction (Docket Entry No. 18) (Sept. 12, 2003) at 2-4.

24 ² Declaration of Paul Enjalran ¶ 2.

25 ³ *Id.*; Declaration of Anne Norris Graham ¶ 5.

26 ⁴ *Shillitani v. United States*, 384 U.S. 364, 370 (1966); *Balla v. Idaho State Bd. of Corr.*,
869 F.2d 461, 466 (9th Cir. 1989).

27 ⁵ *Willy v. Coastal Corp.*, 503 U.S. 131, 139 (1992).

1 3. A finding of civil contempt requires clear and convincing evidence⁶ that the
2 contemnor has violated a specific and definite court order.⁷

3 4. "Failure to comply consists of not taking 'all the reasonable steps within [one's] power
4 to ensure compliance with the order [].'"⁸

5 5. Once the moving party has shown that the contemnor has violated an order, the burden
6 shifts to the contemnor to demonstrate why he was unable to comply, and that he took "every
7 reasonable step" to comply.⁹

8 6. "Intent," as the Ninth Circuit has held, "is irrelevant to a finding of civil contempt and,
9 therefore, good faith is not a defense."¹⁰

10 7. Civil contempt sanctions can consist of fines or incarceration and may be purged
11 through obedience with the Court's orders.¹¹

12 8. In fashioning a sanction for civil contempt, district courts have broad discretion, and
13 should consider "the character and magnitude of the harm threatened by continued contumacy
14 and the probable effectiveness of any suggested sanction in bringing about the result desired."¹²

17 ⁶ *Balla*, 869 F.2d at 466 ("The proof for civil contempt must be clear and convincing—a higher
18 standard than the preponderance of the evidence standard but less stringent than beyond a
19 reasonable doubt.").

20 ⁷ *Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1323 (9th Cir. 1998); *Stone v. City and
21 County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992).

22 ⁸ *Balla*, 869 F.2d at 466 (quoting *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir.
23 1976)).

24 ⁹ *Stone*, 968 F.2d at 856 n.9; *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983).

25 ¹⁰ *Stone*, 968 F.2d at 856 (9th Cir. 1992). See also *In re Dual-deck Video Cassette Recorder
26 Antitrust Litigation Go-video, Inc.*, 10 F.3d 693, 695 (9th Cir. 1993) ("The contempt 'need not
27 be willful,' and there is no good faith exception to the requirement of obedience to a court order.").

28 ¹¹ *Federal Trade Comm'n v. Affordable Media, L.L.C.*, 179 F.3d 1228, 1233 (9th Cir. 1999)
(affirming a district court's order of coercive incarceration as a contempt sanction against
defendants who failed to repatriate funds as ordered by the court).

¹² *United States v. United Mine Workers*, 330 U.S. 258, 304 (1947).

1 9. Having failed to comply with paragraphs E through H of the Preliminary Injunction,
2 Thompson is in contempt.

3 10. Sanctions are appropriate and necessary to coerce Thompson's compliance with the
4 Preliminary Injunction.

5 11. Because Thompson has yet to pay the \$2,000 sanction the Court entered against him
6 on November 18, 2003 for violation of Rule 11, and has continued to file frivolous documents
7 despite that sanction, the Court finds it unlikely that monetary sanctions will coerce Thompson's
8 compliance with the Preliminary Injunction.¹³

9 12. Instead, the Court finds that incarceration is appropriate to coerce Thompson's
10 compliance with paragraphs E through H of the Preliminary Injunction.

11 **III. Finding of Contempt**

12 Walter Thompson is in contempt of this Court.

13 **IV. Order of Incarceration**

14 Walter Thompson is hereby remanded to the custody of the United States Marshals
15 Service until further order of this Court. The Court will dissolve the order of civil contempt
16 upon presentation of sufficient evidence that:

17 1. Thompson has amended and corrected his Form 941 for the third quarter of 2000;

18 2. Thompson has filed a complete and accurate Form 941 for the first and second
19 quarters of 2003;

20 3. Thompson has paid the taxes and interest lawfully owing for the third quarter of 2000
21 and the first and second quarters of 2003;

22
23 ¹³ Memorandum and Order (Docket Entry No. 38) (Nov. 18, 2003). The Court gave Thompson
24 thirty days, until December 18, 2003, to pay the sanction; to date, he has failed to do so. His
25 subsequent frivolous filings include his "Legal Notice," Docket Entry No. 40 (Nov. 24, 2003), in
26 which he rejected the Court's November 18, 2003 Order, upbraided the Court for having
27 "no first hand knowledge [of his] commercial affairs," and threatened to charge the Court and
the United States \$500,000 for using his "copyrighted" name, and a new suit he filed on
December 23, 2003 — *Walter Thompson v. United States of America, Anne Norris Graham,*
Rex K. Lee, McGregor W. Scott, United States District Court Eastern District, Misc. S-03-0379
WBS GGH PS — in which he objects to a subpoena the United States issued in the instant action.

1 4. Thompson has filed with the SSA and issued to Cencal's employees amended Forms
2 W-2 for 2000 and accurate Forms W-2 for 2001 through 2002 and has sent copies of these Forms
3 W-2 to counsel for the United States;

4 5. Thompson has delivered to all Cencal's current employees, and any former employees
5 employed at any time since July 1, 2000, a copy of the Preliminary Injunction;

6 6. Thompson has posted and kept posted in one or more conspicuous places on Cencal's
7 business premises a copy of the Preliminary Injunction.

8
9 IT IS SO ORDERED.

10
11 Dated: March 5, 2004


FRANK C. DAMRELL, JR.
United States District Judge